



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION II**

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March 20, 2014

Michael Vanyo
Superintendent of Schools
Gloversville School District
234 Lincoln Street
Gloversville, New York 12087

Re: Case No. 02-13-1321
Gloversville Central School District

Dear Superintendent Vanyo:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR), with respect to the above-referenced complaint filed against the Gloversville Central School District. The complainant alleged that the District discriminated on the basis of disability, because the following were not accessible to individuals with disabilities: the entrances to the high school (the School) (Allegation 1);¹ the bathroom in the nurse's office at the School (Allegation 2); and the ramp to the stage used for the high school graduation ceremony on June 22, 2013 (Allegation 3). The complainant also alleged that District staff harassed her based on her disability, by escorting her up to the stage during the high school graduation ceremony on June 22, 2013 (Allegation 4).

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (the ADA), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. Under the ADA, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District is a recipient of financial assistance from the Department and is a public elementary and secondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under both Section 504 and the ADA.

¹ The complainant raised Allegation 1 during the course of OCR's investigation of the complaint.

In its investigation, OCR reviewed information that the complainant and the District submitted. OCR also interviewed the complainant and District staff. Additionally, OCR conducted an on-site inspection of the School.

With respect to Allegation 1, the complainant alleged that the entrances to the School were not accessible to individuals with disabilities. Specifically, the complainant alleged that the School's main entrance is not accessible; and, although the School has a designated accessible entrance, this entrance is kept locked and lacks a system for patrons to announce their presence and gain entry.

The regulation implementing Section 504, at 34 C.F.R. § 104.21, provides that “[n]o qualified person with a disability shall, because a recipient’s facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.” The ADA includes a similar requirement for public entities at 28 C.F.R. § 35.149.

OCR determined that the School was constructed in 1961. District staff advised OCR that the entrances to the School were altered between 2003 and 2011. The regulation implementing Section 504, at 34 C.F.R. § 104.23, categorizes facilities constructed or altered by, on behalf of, or for the use of a recipient after June 3, 1977, as “new construction.” Accordingly, OCR determined that the School’s entrances, which were altered between 2003 and 2011, are new construction as defined by Section 504.² The regulation implementing Section 504 requires that new construction be readily accessible to and usable by individuals with disabilities.³ The regulation implementing Section 504, at 34 C.F.R. § 104.23, requires that all facilities constructed or alterations to existing facilities made after January 18, 1991, be in compliance with the Uniform Federal Accessibility Standards (UFAS), or it must be clearly evident that equivalent access is provided to meet the requirements of Section 504, such as through compliance with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG).⁴

OCR did not identify any accessibility issues with respect to the main entrance to the School, and determined that the main entrance is located on an accessible route from the School’s accessible parking spaces. Additionally, OCR determined that although the main entrance to the School is kept locked for security reasons, it is equipped with a buzzer so that patrons can announce their presence and gain entry. Accordingly, OCR will take no further action with respect to Allegation 1.⁵

² The entrances are also new construction as defined by the regulation implementing the ADA, at 34 C.F.R. § 35.151.

³ The regulation implementing the ADA contains a similar requirement at 34 C.F.R. § 35.151.

⁴ Pursuant to the regulation implementing the ADA, at 28 C.F.R. § 35.151, new construction or alteration of existing facilities commenced after January 26, 1992, must be in conformance with UFAS, ADAAG, or equivalent standards. Beginning March 15, 2012, all new construction or alterations of existing facilities must conform to the 2010 ADA Standards for Accessible Design (2010 Standards).

⁵ OCR determined that there is a service entrance to the School located at the “G” lobby, which is kept locked for security reasons and does not have a system in place for patrons to announce their presence and gain entry. OCR

With respect to Allegation 2, the complainant alleged that the bathroom in the nurse's office at the School is not accessible to individuals with disabilities. Specifically, the complainant alleged that the entrances were too narrow to accommodate a XXXXXX or wheelchair, and there were no grab bars.

The District advised OCR that the bathroom in the nurse's office has never been altered since the School was constructed in 1961. The regulation implementing Section 504, at 34 C.F.R. § 104.22, categorizes facilities constructed on or before June 3, 1977, as "existing facilities." Accordingly, OCR determined that the bathroom in the nurse's office is an "existing facility" under Section 504.⁶ The regulation implementing Section 504 requires a recipient to operate each program or activity conducted in existing facilities so that the program or activity, when viewed in its entirety, is readily accessible to individuals with disabilities.⁷ The regulation does not require a recipient to make structural changes to existing facilities. A recipient may comply through means such as redesign of equipment, or reassignment of classes or other services to accessible buildings or locations. Where programs or activities cannot or will not be made accessible using alternative methods, structural changes may be required in order for recipients to comply.

OCR determined that the restroom in the nurse's office is not the primary restroom available for use by students on the main floor of the School; rather, a student would generally only use the restroom in the nurse's office if the student visited the nurse's office for some reason.⁸ OCR identified multiple accessibility issues with respect to the restroom in the nurse's office, including the door width; height of light switches soap dispensers, towel dispensers and mirrors; height of the toilet seat; lack of grab bars and lack of pipe insulation.

The District asserted that students with disabilities primarily use the accessible girls' and boys' restrooms located on the same floor as the nurse's office, approximately fifty feet away; and, students visiting the nurse's office in need of a restroom could use these accessible restrooms instead. OCR determined that the girls' and boys' restrooms each contain one accessible stall; however, the District has removed the doors to the accessible stalls. OCR noted that the doors of other stalls had not been removed. OCR determined that because of the lack of a stall door on the accessible stall in girls' and boys' restrooms, the stalls do not provide privacy comparable to the stalls that non-disabled students may use. On March 1, 2014, the District agreed to implement the enclosed resolution agreement, which addresses this compliance concern.

With respect to Allegation 3, the complainant alleged that the ramp to the stage used for the high school graduation ceremony on June 22, 2013, was not accessible to individuals with disabilities.

determined that the entrance at the "G" lobby is close to a surface road that the complainant's mother used to drop off the complainant, and School staff therefore allowed the complainant to use this entrance for her convenience; however, this is not the designated accessible entrance. As stated above, the main entrance is the designated accessible entrance and is located on an accessible route from the School's accessible parking.

⁶ The bathroom is also an existing facility under the ADA. Under the ADA, an existing facility includes facilities that were constructed, or for which construction was commenced, prior to January 26, 1992, the effective date of the regulation implementing the ADA.

⁷ The ADA contains a similar requirement for public entities at 28 C.F.R. § 35.149-35.150.

⁸ The restroom in the nurse's office is available to all students; however, it is not the primary designated student restroom on the floor.

Specifically, the complainant alleged that the ramp was too steep, and did not have railings extending past the end of the ramp.

OCR determined that the District purchased the portable stage and ramp used for the June 2013 graduation ceremony during school year 2012-2013, and installed it shortly before the ceremony.⁹ Accordingly, OCR determined that the stage and ramp were “new construction” under Section 504 and the ADA. OCR identified accessibility issues with respect to the slope of the ramp, lack of handrails extending to the bottom of the ramp, and lack of bottom handrail extensions. On March 1, 2014, the District agreed to make the structural changes set forth in Appendix A of the enclosed resolution agreement, to address these compliance concerns.

With respect to Allegation 4, the complainant alleged that District staff harassed her based on her disability, by escorting her up to the stage during the high school graduation ceremony on June 22, 2013.¹⁰ The complainant stated that during a rehearsal on June 21, 2013, she informed District staff that the ramp to the stage was too steep, and that she may have trouble ascending it. The complainant further stated that rather than addressing any structural issues with the ramp, during the graduation ceremony on June 22, 2013, the Principal’s assistant (the Assistant) pushed her XXXXXX up and down the ramp as she ascended and descended it to receive her diploma, in front of hundreds of people. The complainant informed OCR that she felt humiliated by the Assistant’s actions.

Disability harassment is a form of discrimination prohibited by Section 504, the ADA and their implementing regulations. Disability harassment under Section 504 and the ADA is intimidation or abusive behavior toward a student based on disability that creates a hostile environment by interfering with or denying a student’s participation in or receipt of benefits, services or opportunities in the institution’s program. Harassing conduct may take many forms, including verbal acts and name-calling, as well as non-verbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful or humiliating. When harassing conduct is sufficiently severe, persistent or pervasive that it creates a hostile environment, it can violate a student’s rights under Section 504 and the ADA.

The Principal and the Assistant denied that the complainant informed them during the rehearsal that she may have trouble ascending the stage because it was too steep. The Principal stated that during the rehearsal, the Assistant expressed concern that the complainant might have difficulty ascending and descending the ramp during the ceremony. The Principal stated that the complainant wore sneakers during the rehearsal and had difficulty navigating the ramp with her XXXXXX; and they were worried that she would have difficulty the following day, especially if she wore dress shoes. The Principal and Assistant informed OCR that they therefore agreed that the Assistant would stand at the bottom of the ramp to assist the complainant as she went on and off the ramp. The Assistant stated that during the ceremony, the complainant told her that she was nervous and worried about getting back to her seat. The Assistant stated that she therefore asked the complainant whether the complainant wanted her to hold onto the XXXXXX during her ascent and descent, and the complainant agreed. The Assistant stated that she then escorted the complainant up and down the ramp while holding the complainant’s XXXXXX. The

⁹ OCR determined that the District did not use a stage or ramp in prior years.

¹⁰ The complainant has XXXXXX and uses a XXXXXX.

Assistant stated that the complainant was smiling during her ascent and descent, and did not say anything about wanting to walk on the ramp XXXXX.

The complainant contested the Assistant's account and denied that she told the Assistant she was nervous and worried about getting back to her seat. The complainant further stated that the Assistant did not ask her whether she wanted the Assistant to hold onto the XXXXX during her ascent and descent; rather, she stated that the Assistant took hold of her XXXXX without asking and pushed her up and down the ramp. The complainant stated that she did not voice her objection when the Assistant took hold of her XXXXXX, because her name had been called and she needed to begin her ascent to retrieve her diploma; therefore, she felt that she had no choice but to allow the Assistant to hold onto her XXXXXX.

Based on all of the above, and taken in the context within which it occurred, OCR determined that the Assistant's act of holding on to the complainant's XXXXXX to help her ascend and descend the ramp was not abusive or an act of intimidation. Although humiliating to the complainant and unacceptable as a method of providing permanent access to a person with a disability, the Assistant's acts in this context were not disability harassment as contemplated by the regulations implementing Section 504 or the ADA. In addition to agreeing to address accessibility concerns regarding the ramp, as set forth with respect to Allegation 3, on March 1, 2014, the District agreed to provide training to all relevant staff about its obligations to ensure accessibility of District facilities and appropriate responses to accessibility concerns. Accordingly, OCR will take no further action with respect to Allegation 4.

As set forth above, on March 1, 2014, the District agreed to implement the enclosed resolution agreement, which addresses the compliance concerns identified in this letter. OCR will monitor the implementation of the resolution agreement. If the District fails to implement the terms of the resolution agreement, OCR will resume its investigation of the complaint.

This letter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions about OCR's determination, please contact Diane Castro, Compliance Team Investigator, at (646) 428-3808 or diane.castro@ed.gov, or James Moser, Compliance Team Attorney, at (646) 428-3792 or james.moser@ed.gov.

Sincerely,

/s/

Timothy C. J. Blanchard

Encl.